

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: JULY 25, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYO)
FROM: DIVISION OF ECONOMIC REGULATION (FITCH, DAVIS)
OFFICE OF THE GENERAL COUNSEL (CIBULA)
RE: DOCKET NO. 001382-WS - APPLICATION FOR STAFF-ASSISTED RATE CASE IN LAKE COUNTY BY PENNBROOKE UTILITIES, INC. COUNTY: LAKE
AGENDA: 08/06/02 - REGULAR AGENDA - ISSUE 1 PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\ECR\WP\001382.RCM

CASE BACKGROUND

Pennbrooke Utilities, Inc. (Pennbrooke or utility) is a water and wastewater utility located in Lake County. Pennbrooke is a subsidiary of Leisure Communities Ltd. which is the company developing the service area. The utility provided service to approximately 670 residential customers, a golf course, and a restaurant during the historic test year ending September 30, 2000. The utility's service area is a retirement community built around a golf course in the West Lake County area. The majority of the residents are seasonal and reside in the community only a portion of the year. All the residents' homes are individually metered.

On September 12, 2000, the utility filed an application for a staff assisted rate case (SARC). By Order No. PSC-01-1246-PAA-WS, issued June 4, 2001, the Commission approved the utility's current rates, charges, and rate base. A portion of the rates base approved included pro forma additions to plant.

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In the above-referenced order, the utility was ordered to complete the pro forma improvements within 12 months of the effective date of the order. The utility completed all the pro forma items requested with the exception of one item. None of the pro forma items requested were required by DEP. The Commission has jurisdiction in this case pursuant to Section 367.0814, Florida Statutes.

ISSUE 1: Should Pennbrooke's rates be reduced to remove the rate impact of the pro forma plant item not completed by the utility?

RECOMMENDATION: Yes, wastewater rates should be reduced by 4.99% (\$10,576) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule A. (FITCH, T. DAVIS)

STAFF ANALYSIS: As discussed in the case background, the utility was required to complete several pro forma items by Order No. PSC-01-1246-PAA-WS, issued June 4, 2001, within 12-months of the effective date of the order. This order also specified that this docket remain open pending staff's verification that the utility has completed the pro forma requests. The utility has provided staff with cost verification of the items completed.

Staff discovered that the utility did not install a new hydro pneumatic tank. This tank was requested by the utility in the above-referenced order, the Commission approved the cost for this tank in the calculation of rates. The utility requested this tank to account for future growth. According to the utility, Pennbrooke hired an engineer to begin the process of installing the tank. According to the utility, the engineer did not believe the tank was necessary at this time. Therefore, the utility has decided not to install the tank.

Because the cost of the hydro pneumatic tank was included in rates and the utility has elected not to install the tank, staff believes that rates should be reduced in order to remove this item from rates. In order to determine the appropriate amount of the rate reduction, staff has compared the pro forma allowance approved in the above-referenced order for water and wastewater with the actual cost of the pro forma additions provided by the utility. The following is a schedule of Commission approved pro forma plant and actual cost:

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	<u>PSC-01-1246-PAA-WS</u>	<u>Actual</u>	<u>Difference</u>
<u>Water</u>			
Generator	\$16,000	\$17,287	(\$1,287)
Hydro Tank	\$100,000	\$945	\$99,055
<u>Wastewater</u>			
Generator	\$16,000	\$17,287	(\$1,287)
Surge tank & ponds	<u>\$157,097</u>	<u>\$167,613</u>	<u>(\$10,516)</u>
Total	<u>\$289,097</u>	<u>\$203,132</u>	<u>\$85,966</u>

The Commission approved pro forma allowances accounted for \$42,583 of the net revenue requirement approved in the above referenced order. Applying the same methodology to the actual pro forma cost incurred would result in a revenue requirement of \$32,008, from pro forma additions. The difference in revenue requirement (\$10,576) represents the amount staff believes existing rates should be reduced by.

Although the majority of the decrease recommended was the result of the water system, staff believes that the net reduction should be applied to the wastewater system. In the above referenced order, the Commission found that the utility was overearning on its water system and that a revenue decrease is normally the appropriate action under these circumstances. However, the Commission found that approving a rate decrease for water was not appropriate in this case. The Commission found that the wastewater system should absorb the reduction in revenue requirement from the water system. The Commission set forth the following reasons in the order:

Lake County has been designated as a water caution area by the SJRWMD. Several of the utility's customers use an excessive amount of water. A reduction in water rates would promote more of this behavior. Through our Memorandum of Understanding (MOU) with the Water Management Districts, we have set rates with conservation in mind. According to the utility's CUP, September 30, 1999, the utility must implement a conservation rate structure within two years of permit issuance. Reducing the water revenue requirement would not allow us to

construct a meaningful conservation rate structure. The water and wastewater systems have the same customer base, therefore, a reallocation of revenue requirement between systems will have the same net effect on customers. A reduction of water rates, when a logical alternative exists, would not be consistent with either the utility's CUP or our MOU with the Water Management Districts in this instance.

Staff believes that the circumstances of this case have not changed and that a reduction of water rates should not be implemented. Instead staff is recommending that the reduction in rates be absorbed by the wastewater system consistent with the above-referenced order. The Commission approved wastewater rates are designed to recover \$211,952. Applying the reduction to revenue requirement of \$10,576 discussed above results in a 4.99% ($\$10,576 \div \$211,952$) reduction in existing wastewater rates.

Therefore, staff recommends that wastewater rates should be reduced by 4.99% (\$10,576) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule A.

ISSUE 2: Should Pennbrooke be ordered to show cause, in writing, within 21 days, why it should not be fined for failing to complete all of the pro forma additions required by Order No. PSC-01-1246-PAA-WS?

RECOMMENDATION: No, a show cause proceedings should not be initiated. (CIBULA, FITCH)

STAFF ANALYSIS: As previously discussed, during the investigation of the original SARC proceeding, staff discovered that the utility was growing at an exceptionally high rate and that the utility was overearning on the water system. The utility indicated that a new hydro pneumatic tank, along with some other pro forma additions, would be necessary to accommodate the customer growth. The Commission approved recovery of the tank and the other pro forma additions through rates by Order No. PSC-01-1246-PAA-WS, issued June 4, 2001. The Commission ordered the utility to complete all the pro forma additions within 12 months of the issuance date of the Order.

Subsequent to the order becoming final, the utility's engineer determined that the new tank would not be necessary to meet the future customer demand. Based on the recommendation of the utility's engineer, Pennbrooke did not install the hydro pneumatic tank. The utility completed all of the other pro forma additions ordered by the Commission.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Thus, any intentional act, such as failing to install the hydro pneumatic tank within the time period specified in Order No. PSC-01-1246-PAA-WS, would meet the standard for a "willful violation." In In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, the Commission having found that the

company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Staff does not believe, however, that Pennbrooke's apparent violation of Order No. PSC-01-1246-PAA-WS rises in these circumstances to the level which would warrant the initiation of a show cause proceeding. Staff believes that it is not reasonable to require the utility to install an unnecessary item of plant to its water system. The Commission's decision in the above-referenced order reflected the facts of this case at that time. Obviously, the Commission would not have ordered the installation of the hydro pneumatic tank if it was not needed. It should be noted that the pro forma plant requested in this case was not required by the Department of Environmental Protection.

In Issue 1, staff is recommending that the rates be reduced to remove the rate impact of the pro forma not completed by the utility. Therefore, the customers will not be adversely affected by the utility's inaction.

As explained above, staff does not believe that Pennbrooke's apparent violation of Order No. PSC-01-1246-PAA-WS rises in these circumstances to the level which would warrant the initiation of a show cause proceeding. Thus, staff recommends that a show cause proceedings should not be initiated.

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ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes. If no timely protest is filed by a substantially affected person, this docket should be closed upon the issuance of a Consummating Order. (CIBULA, FITCH)

STAFF ANALYSIS: If no timely protest is filed by a substantially affected person, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed within 21 days of the issuance of the Order, the tariffs should remain in effect with any increase held subject to refund pending resolution of the protest, and the docket should remain open.

RECOMMENDED RATE REDUCTION SCHEDULE

PENNBROOKE UTILITIES, INC.
 TEST YEAR ENDING 9/30/01

SCHEDULE NO. A
 DOCKET NO. 001382-WS

CALCULATION OF RATE REDUCTION AMOUNT
AFTER RECOVERY OF RATE CASE EXPENSE AMORTIZATION PERIOD OF FOUR YEARS

MONTHLY WASTEWATER RATES

<u>RESIDENTIAL, MULTI-RESIDENTIAL, AND GENERAL SERVICE</u>	<u>COMMISSION APPROVED RATES</u>	<u>STAFF RECOMMENDED RATES</u>
<u>BASE FACILITY CHARGE:</u>		
Meter Size:		
5/8"X3/4"	\$ 7.85	7.45
3/4"	11.77	11.18
1"	19.62	18.64
1-1/2"	39.23	37.27
2"	62.77	59.64
3"	125.54	119.27
4"	196.15	186.37
6"	392.31	372.73
<u>RESIDENTIAL GALLONAGE CHARGE</u> PER 1,000 GALLONS (8,000 GALLON MAX. PER MONTH)	\$ 1.96	1.86
<u>MULTI RESIDENTIAL & GENERAL SERVICE</u> GALLONAGE CHARGE PER 1,000 GALLONS	\$ 2.35	2.24